S.B.CIVIL WRIT PETITION NO.496/2007

Chhaganlal
v.
State of Rajasthan & Ors.

Date of Order :: 23rd August, 2007

HON'BLE MR.JUSTICE GOVIND MATHUR

Mr. Sandeep Shah, for the petitioner.
Mr. B.L.Tiwari, Deputy Government Advocate.
Mr. Vijay Bishnoi, for the respondents.

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The petitioner, an elected Sarpanch of Gram Panchayat, Dabal, Panchayat Samiti Sanchore, has given challenge to the order dated 17.1.2007 passed by the Vikas Adhikari, Panchayat Samiti, Sanchore placing the petitioner under suspension in pursuant to the order dated 12.1.2007 passed by the Additional Secretary to the Government of Rajasthan (Inquiries), Department of Panchayat Raj and Rural Development. The petitioner was placed under suspension while exercising powers under Section 38(4) of the Rajasthan Panchayati Raj Act, 1994 (hereinafter referred to as “the Act of 1994”) as a sanction was granted for his prosecution for the offences under Sections 332, 353 and 186 IPC. The petitioner was also subjected to an inquiry for the allegation that he was found guilty for the offences under Sections 332, 353 and 186 IPC in a case No.69/2005, lodged at Police Station, Sanchore and that indicates his misconduct.

The contention of counsel for the petitioner is that the petitioner is a democratically elected office bearer of a Panchayat Raj Institution and, therefore, merely on the count that he is facing a trial for the criminal charges, he cannot be placed under suspension ipse-dixit. According to counsel for the petitioner the State Government should have applied its mind before placing the petitioner under suspension and was required to satisfy itself that the suspension of Sarpanch was essential for fair holding of inquiry and also that if he be allowed to continue in the office of Sarpanch despite facing criminal charges, that shall cause a serious injury to the reputation of the rural local self-body i.e. Gram Panchayat. To substantiate the contention, the petitioner has placed reliance upon the judgment of this Court given in the case of Smt. Vimla Devi v. State of Rajasthan & Ors., SBCWP No.3729/2007, decided on 17.8.2007. In the case aforesaid this Court while considering an issue with regard to placement of an elected Chairman of Municipal Board, held as under:-

> "The power to take disciplinary action against an elected member/office bearer is available to the State, however, that should be exercised with all caution by keeping in mind that it may not hurt democratic values as well as autonomy of the Board. The power as given under Section 63 of the Act of 1959 including a power to place a member/office

bearer of the Municipal Board under suspension should be exercised sparingly and only after reaching at a conclusion that holding of a fair inquiry against a delinquent shall be almost impossible without resorting to his/her suspension. It must be understood that suspension of an elected member virtually amount to put the voice of people to whom he/she represents in abeyance and such action is an exception to the democratic values, therefore, all possible efforts should always be made to conduct an inquiry by maintaining high traditions of democracy. In a democratic system the conduct and image of peoples representative is of prime consideration, therefore, the person conducting inquiry may that be judicial inquiry should conclude it as expeditiously as possible by maintaining all fairness and objectivity irrespective of the fact that the member/office bearer is under suspension or not."

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"The basic philosophy to keep the authority of an elected representative of people in absence by way of suspension is that his acts on face appears against the interest of people, and his/her continuation in office may effect the process of investigation, hence, in every case where State desire to exercise powers under Section 64(4) of the Act of 1959, it must satisfy itself that a fair inquiry shall be reasonably impracticable without exercising such powers, and the satisfaction so arrived must

> be recorded though it is not required to be communicated to the person concerned till demanded. What it appears that the State Government in every case where a decision is taken to hold an inquiry as per the provisions of Section 63 of the Act of 1959 in quite routine manner places the delinquent under suspension. The theory of suspension as applicable in service jurisprudence cannot and should not be imposed or adopted in the matters relating to the elected persons."

It is stated by counsel for the respondents that the present one is not the case where the Sarpanch was placed under suspension as he is facing the charges of misconduct under an inquiry but for the reason that he is facing a trial for criminal charges and thus the law propounded by this Court in the case of Smt. Vimla Devi (supra) is having no application in present case.

It is true that in the case of Smt. Vimla Devi (supra) the Court was considering the issue with regard to placement of an elected person under suspension on facing an inquiry for the allegations of misconduct but the law propounded in that case is with regard to checks and cautions required to be observed by the State Government while placing an elected member of a Local Self Government Body under suspension, thus, that is having absolute application in present case too.

No doubt that Section 38(4) of the Act of 1994 empowers the Government to place an elected member or office bearer of a Panchayat Raj Institution, if criminal proceedings are initiated against him for the offences involving moral turpitude, but it does not mean that the Government is having unbridle authority to place a member of a Panchayat Raj Institution under suspension without application of mind in every case of initiation of proceedings for the charges of criminal offences. Before placing an elected member of Panchayat Raj Institution, the Government must reach at a specific conclusion by objective consideration that the offences for which the member of the Panchayat Raj Institution is facing criminal trial involves moral turpitude and the continuation in office of such person will cause an irreparable injury to the reputation of Panchayat Raj Institution. Without making such opinion, a simple suspension in every case on initiation of the proceedings for adjudication of the criminal charges is bad in eye of law.

In the instant matter the petitioner is facing trial for the offences under Sections 186, 332 and 353 IPC. For such charges the involvement of moral turpitude cannot be presumed without proper application of mind. The respondent Government before placing the petitioner under suspension should have

examined as to how the charges alleged involves moral turpitude and how it cause irreparable injury to the reputation of the Panchayat Raj Institution.

From reply to the writ petition in the instant matter, what it reveals that the respondents just on initiation of the proceedings for the allegations of criminal charges, placed the petitioner under suspension. The same, therefore, is illegal and deserves to be quashed.

Accordingly, this petition for writ is allowed. The order passed by the Government of Rajasthan dated 12.1.2007 and the order dated 17.1.2007 passed by the Vikas Adhikari, Panchayat Samiti, Sanchore placing the petitioner under suspension is quashed. Consequent thereto, the petitioner is restored as Sarpanch of Gram Panchayat, Dabal.

(GOVIND MATHUR),J.

Kkm/ps.